



August 26, 1999

Mr. Thomas G. Ricks
President
The University of Texas Investment
Management Company
210 West Sixth Street, Second Floor
Austin, Texas 78701

OR99-2418

Dear Mr. Ricks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127096.

The University of Texas Investment Management Company (UTIMCO) received a request for "written instructions" to UTIMCO from university and Vinson & Elkins counsel concerning the Texas Public Information Act (the Act). You state that you have released some information responsive to this request. You initially argue, however, that the request for information is not a proper request under the Act. Essentially, you are arguing that UTIMCO need not answer the request at issue because the requestor's communication to UTIMCO is not a "written request" which triggers the application of the Act. In the alternative, you claim that all remaining responsive information is protected from required public disclosure by section 552.107(1) of the Government Code. In your original request to this office, you assert that the responsive information is additionally protected by sections 552.101 and 552.111 of the Government Code. In subsequent communication, you do not raise nor provide any argument under these exceptions. You have provided for our review a representative sample of the responsive information you seek to withhold.¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You argue first that the request for information is not a proper written request as required by the Act. You explain that the request for information was sent through electronic mail to Mr. Thomas G. Ricks, President of UTIMCO. You argue that he is not the person designated to receive electronic mail requests. Rather, UTIMCO's Records and Information Manager is designated to receive electronic mail requests. Section 552.301 of the Government Code provides in part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request. *For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.*

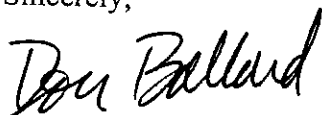
There is no requirement to release information under the Act in the absence of a written request. Open Records Decision Nos. 483 (1987), 304 (1982). A governmental body may require a requestor to submit a request in writing. It follows, therefore, that a governmental body may require electronic mail or facsimile requests for information to be sent to those persons mentioned in the statute. If such requests are not sent properly under section 552.301, they are not "written requests," and the application of the Act is not triggered. If requests are sent to members of the governmental body not designated to receive electronic communications, a governmental body need not treat them as "written requests."

Again, you indicate that the request for information here was sent through electronic mail to Mr. Thomas G. Ricks, President of UTIMCO. It also appears from your arguments that Mr. Ricks is the chief administrative officer of UTIMCO. As such, he would also be the Officer for Public Information for UTIMCO under the Act. Gov't Code § 552.201(a). The last sentence of section 552.301(a) could be interpreted to mean that any request sent to the officer for public information and the officer's designee are proper "written requests" under the Act. We do not believe, however, it is necessary to resolve this specific question at this time. Because we will conclude that section 552.107 is applicable in this instance, even if the electronic mail request is a proper, "written request," you need not release the requested information.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* You explain that all of the submitted information contains legal advice from UTIMCO's attorneys. We have reviewed the submitted information and agree that it consists solely of the legal opinions and advice provided to UTIMCO by its attorneys. The requested information may be withheld under section 552.107(1). *See* Tex. R. Civ. Evid. 503(b)(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Don Ballard
Assistant Attorney General
Deputy Chief, Open Records Division

JDB/ch

Ref: ID# 127096

Encl. Submitted documents

cc: Mr. Stephen Lisson
Editor & Publisher
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